



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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March 12, 2012

Mr. Victor Salazar
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-62; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Salazar:

This advisory opinion is in response to your formal complaint alleging the Indiana State Prison ("Prison") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Pam James responded on behalf of the Prison. Her response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

BACKGROUND

In your formal complaint, you allege that on February 8, 2012, you submitted a public records request to the Prison that was received on February 15, 2012. The Prison denied your request due to lack of funds in your account. You thereafter allege that you requested an unnamed offender, who retained the necessary funds to pay for the records, to submit a similar records request to the Prison. The unnamed offender's request was denied pursuant to I.C. § 5-14-3-4(b)(23). You believe that the Prison improperly overlooked the requirements of I.C. § 5-14-3-4(b)(8) in responding to the unnamed offender's request. Further, you allege that the Prison improperly cited to 210 IAC 1-6-2 in denying the unnamed offender's request. You did not include in your formal complaint any correspondence between the unnamed offender and the Prison.

In response to your request, Ms. James advised that the Prison responded to your original request pursuant to the requirements of section 9 of the APRA. In the Prison's response, you were advised that you would be required to pay the requisite fees for the records you sought prior to their disclosure. The Prison submitted to you a copy of your current Offender Trust Account, which provided that you did not have the necessary funds. The Prison submitted further correspondence to you on February 20, 2012 and advised that as to the records that sought the disciplinary records of certain correctional officer was denied pursuant to I.C. § 5-14-3-4(b)(23). As to your request for the entire

conduct history of two offenders, the Prison cited 210 IAC 1-6-2 and 210 IAC 1-6-6(D) in denying your request.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Prison is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Prison’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

As an initial matter, I.C. § 5-14-5-6 provides that a person or a public agency denied the right to inspect or copy records under I.C. 5-14-3 or any other right conferred by I.C. 5-14-3 or any other statute or rule governing access to public records may file a formal complaint with the counselor under the procedure prescribed by this chapter or may make an informal inquiry under I.C. § 5-14-4-10(5). I.C. § 5-14-5-7 provides that a person or public agency filing a formal complaint must file the complaint not later than thirty days after the denial. Your request for records was denied by the Department on February 15, 2012. Therefore, you would have standing to file a formal complaint with the counselor in regards to your request that was submitted to the Prison. You would not have standing to file a formal complaint for the unnamed offender that you reference in your formal complaint. Should the unnamed offender so desire, he is welcome to file a formal complaint with the counselor regarding any alleged violation of the APRA by the Prison.

As to your request, a request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Prison responded to your written request within the time guidelines provided by section 9 of the APRA.

The APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Public agencies may require a person to pay the copying fee in advance. *See* I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. The Prison denied your request as you did not maintain the necessary funds in your offender

trust account to pay for the records that were requested. As such, it is my opinion that the Prison did not violate the APRA by denying your request for failure to pay the respective fees associated with the records that were sought.

CONCLUSION

For the foregoing reasons, it is my opinion the Prison did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Pam James